

Exhibit 5

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 10-1959

**IN RE: PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION**

MDL No. 1456

C.A. No. 01-12257-PBS

HONORABLE PATTI B. SARIS

**APPELLANT'S MOTION FOR LEAVE TO INCLUDE AN ADDENDUM
TO THE APPELLANT'S REPLY BRIEF**

Appellant Donald E. Haviland, Jr., ("Appellant") hereby files this Motion for Leave to Include an Addendum to the Appellant's Reply Brief, and respectfully requests that this Honorable Court grant this Motion to include the March 28, 2011 transcript of the District Court Final Fairness Hearing as an addendum to Appellant's Reply Brief. In support of this request, Appellant avers as follows:

1. On Monday, March 28, 2011, the District Court held the Final Fairness Hearing ("Fairness Hearing") for the proposed settlement with Defendants Bristol-Myers Squibb ("BMS") in the underlying case, *In re Pharmaceutical Industry Average Wholesale Price Litigation*, C.A. No. 01-12257. Both Appellee counsel and Appellant were present at that Fairness Hearing.

2. During the course of the Fairness Hearing, the issue of this appeal came up and, specifically, the Court's injunction which is the subject of this appeal.

3. The District Court made a number of statements on the record

regarding the Court's Order and its intent as to the scope of the Subject Order on appeal. It is Appellant's belief that the Court substantially modified the scope of the subject injunction and made clear on the record that the Court did not intend for the Subject Order to have the extra-territorial effect that it appears to have on its face. This issue is critical to the subject appeal and may potentially severely limit the scope of this appeal, since the District Court is free to modify the scope of its Order during the pendency of this appeal. *See* Fed.R.App.P. 10(e).

4. The certified transcript from the March 28, 2011 Fairness Hearing was made available to Appellant on March 30, 2011.

5. On March 30, 2011, Appellant filed an Unopposed Motion for Extension of Time to File Appellant's Reply Brief ("Motion for Extension").

6. The basis of Appellant's March 30, 2011 Motion for Extension was to allow Appellant sufficient time to receive, analyze and discuss the transcript in the context of his arguments in reply in this appeal.

6. On March 31, 2011, Appellant's Motion for Extension of Time was granted.

7. As cited in Appellant's Reply Brief , which is being filed contemporaneously with the instant Motion, upon review of the March 28, 2011 Fairness Hearing transcript, it is Appellant's belief that the Court corrected the district court record by substantially modifying the scope of the subject injunction

and clarifying the terms of the June 22, 2010 Order.

WHEREFORE, for the foregoing reasons, Appellant respectfully requests that this Honorable Court grant this Motion and include as an addendum to Appellant's Reply Brief the March 28, 2011 transcript of the District Court Final Fairness Hearing. Alternatively, should the Court not grant the instant Motion, Appellant respectfully requests that the Court grant an extension of the due date of the instant Appellant's Reply Brief to allow the Appellant reasonable time to petition the District Court to correct or modify the record pursuant to Fed.R.App.P. 10(e).

Dated: April 7, 2011

By: _____
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PROOF OF SERVICE

I, Donald E. Haviland, Jr., declare under perjury that the following facts are true and correct:

I am a citizen of the United States, over the age of 18 years, and not a party to or interested in the above-referenced case. I am a partner of Haviland Hughes, LLC, and my business address is 111 S. Independence Mall East, Suite 1000, Philadelphia, PA 19106.

On April 7, 2011, I caused the Motion for Leave to Include an Addendum to the Appellant's Reply Brief to be filed with the Clerk via CM/ECF and all counsel of record were served via CM/ECF notification.

Donald E. Haviland, Jr.